

Decision No. R23-0109-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23F-0081W

IVAN GUILLERMO VALLES

COMPLAINANT,

V.

BAXTER WATER SERVICES, MR. JARDEN, ALSO KNOWN AS MR. JARDENS, O'NEAL
WATER, AND SCOTT GREENWELL,

RESPONDENTS.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
PROHIBITING SERVICE DISCONTINUANCE**

Mailed Date: February 16, 2023

I. STATEMENT AND SUMMARY

A. Summary and Statement

1. For the reasons discussed, this Decision requires that Respondents provide service to Complainant, Mr. Ivan Guillermo Valles, while the Complaint filed on February 15, 2023, is pending. This means that Respondents are prohibited from discontinuing service, and are required to restore service as soon as possible, but no later than three calendar days after this Decision's mail date if service has already been discontinued. This Decision also requires Mr. Valles to pay Respondents the undisputed amounts due for service by February 28, 2023, and to

stay current on his water bill while this matter is pending, except that this does not require Mr. Valles to pay Respondents amounts that the Complaint disputes.

II. BACKGROUND, RELEVANT LAW, FINDINGS AND CONCLUSIONS

A. Background

2. On February 15, 2023, Mr. Valles filed the above-captioned Complaint against Baxter Water Services, (Baxter Water), a Respondent with the last name “Jardens” or “Jarden” (Mr. Jarden), (with Baxter Water), O’Neal Water, and Mr. Scott Greenwell (collectively, O’Neal Water).

3. The Complaint alleges that on February 13, 2023, Mr. Jarden, on behalf of Baxter Water, unlawfully and without notice or consent, excavated Mr. Valles’ front yard area near his water service shut off valve.¹ The Complaint states that when asked why he was doing this, Mr. Jarden told Mr. Valles that he was installing a “deep pit valve/tap” on his water line and that Mr. Valles would be responsible for paying \$800 for this tap in order to have water service restored.² The Complaint alleges that Mr. Jarden stated that this was being done because Mr. Jarden believes that Mr. Valles tampered with the water valve and that he had proof of this; when asked for that proof, Mr. Jarden only stated that the riser tube was glued, but provided no further information, except that that the utility’s previous owner, Mr. Scott Greenwell, with O’Neal Water, told Mr. Jarden that the glue on the riser tube proved tampering.³

4. The Complaint states that Mr. Valles offered to pay Mr. Jarden the amount due for January 2023, \$58.75, plus a \$15 late fee while Mr. Jarden was there in person, but that Mr.

¹ Complaint at ¶3.

² *Id.*

³ *Id.*

Jarden refused, stating that he would need to pay over \$1,000 before service would be restored, and that Mr. Jarden made other comments about “you people in this neighborhood.”⁴

5. The Complaint alleges that Mr. Valles never received a written notice of discontinuance of service at least 15 days in advance of the attempt to disconnect (on 2/13/23), but that Mr. Jarden told Mr. Valles that one was mailed and posted on Mr. Valles’ fence.⁵ Mr. Valles disputes this and argues that Mr. Jarden should be required to provide proof of service from the United States Postal Service.⁶

6. The Complaint alleges that the Commission has not received any requests to transfer O’Neal Water’s authority to Baxter Water and therefore no such transfer has been approved.⁷ Based on this, Mr. Valles states that Mr. Jarden could not be a bona fide representative of Mr. Valles’ water utility, and therefore, that Mr. Jarden unlawfully entered Mr. Valles’ property to install the valve and disconnect service.⁸

7. Mr. Valles believes that Respondents’ actions may be in retribution for a complaint he made with the Commission in 2022 due to repeated water main breaks, flooding, and service interruptions experienced from O’Neal Water in the last 15 years that Mr. Valles has been at the service location.⁹

8. The Complaint includes a bill from “Baxter Water & Services,” with a February 1, 2023 billing date, marked as Exhibit 1. It shows a \$235 prior balance, (which Mr. Valles

⁴ *Id.* at ¶4.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at ¶5.

disputes¹⁰); a \$58.75 charge for water; a \$15.00 late fee; an \$800 tap fee; a \$50 disconnection fee; a \$100 disconnection fee; and a “water adjustment” deducting \$176.25, for a total amount due on February 28, 2023 of \$1,082.¹¹ The bill says nothing about possible discontinuance of service or that Respondents plan to replace the tap at the service location.¹²

9. The Complaint includes numerous requests for relief, including (among others), a request for an order that: prohibits service discontinuance while the Complaint is being resolved; prohibits Baxter Water from performing any disconnects in the service area of O’Neal Water until legally operating with Commission approval; reconnect any unlawful disconnects performed since January 1, 2023 while operating without Commission approval; disallow the \$800 tap fee and disconnection fees (totaling \$150), disallow \$235 as a prior balance; declare that the only amount owed is \$58.75 for January 2023 water and \$15 late fee for January, and \$58.75 for February 2023, for a total of \$132.50 due by the end of February 2023.¹³

B. Relevant Law, Findings, and Conclusions

10. The Commission has “very extensive and broad regulatory powers” over public utilities.¹⁴ That includes regulating a public utility’s rates, services, and facilities, and ensuring that utilities provide safe and reliable service to customers at just and reasonable rates.¹⁵ As

¹⁰ Mr. Valles states that he had no such prior balance, having paid in full with a zero balance on December 4, 2022, using O’Neal’s UBMax Bill Pay system, and that one month of service costs \$58.75 (far less than the alleged \$235 amount). *Id.* at ¶6.

¹¹ Exhibit 1 to Complaint.

¹² *Id.*

¹³ Complaint at ¶5-6.

¹⁴ *Public Serv. Co. of Colo. v. Public Utilities Comm’n*, 350 P.2d 543, 549 (Colo. 1960) *cert. denied*, 364 U.S. 820 (1960); *see also* Colo. Const. art. XXV; §§ 40-3-102, 40-7-101, C.R.S.

¹⁵ §§ 40-3-101, 40-3-102, 40-3-111, and 40-6-111, C.R.S., (2022); *see* Colo. Const. art. XXV.

contemplated under the Public Utilities Law,¹⁶ a water corporation operating for the purpose of supplying the public for domestic, mechanical, or public uses is a public utility subject to the Commission's jurisdiction, control, and regulation.¹⁷ Based on the record, the ALJ finds that the Respondents are or have been operating as a public utility, and therefore are subject to the Commission's jurisdiction and regulation.¹⁸

11. The Commission has authority to issue a decision requiring a regulated entity (including a water utility) to provide service pending a hearing on a complaint where discontinuance of service is an issue upon a showing of good cause, as the Commission deems appropriate.¹⁹

12. The Complaint's allegations, if true, raise numerous serious concerns and potential violations of Commission rules or statutes, chief among them, the allegation that Baxter Water is operating as a utility without Commission authority.²⁰ The ALJ finds that the Complaint establishes good cause and sufficient grounds to require Respondents to provide service while this matter is pending, which means they may not discontinue service while this matter is pending. While it is evident that one or more Respondent attempted to discontinue Mr. Valles' service, it is unclear whether service was, in fact, discontinued. If service has already been

¹⁶ § 40-1-101, C.R.S. (Articles 1 to 7 of title 40, Colorado Revised Statutes, are known as and may be cited as the Public Utilities Law).

¹⁷ § 40-1-103(1), C.R.S.

¹⁸ Respondents may rebut this conclusion as this matter moves forward.

¹⁹ Rule 1302(e)(III) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR), 723-1.

²⁰ See § 40-5-102, C.R.S. (Prohibiting public utilities from operating without a Commission-issued Certificate of Public Convenience and Necessity (CPCN)); § 40-5-105(1), C.R.S. (Commission must authorize the sale of a public utility's assets, including a CPCN). See also, Rules 5104(a) and (b), 5002(a)(V) (must file an application with the Commission for approval to transfer a CPCN and other utility assets), of the Commission's Rules Regulating Water, and Combined Water and Sewer Utilities, 4 CCR 723-5.

discontinued, then Respondents must restore service as soon as possible, but no later than three calendar days after this Decision's mail date.

13. Given that Mr. Valles agrees that he owes Respondents for water service, and in light of the ALJ's order requiring Respondents to continue to provide service while this matter is pending, the ALJ will also require Mr. Valles to remit payment for the amounts that are not in dispute in the Complaint, that is, \$132.50 by the February 28, 2023, due date listed in Exhibit 1 to the Complaint. Mr. Valles must also remain current on his payments for water service while this matter is pending. This does not, however, require Mr. Valles to pay any amounts the Complaint disputes, including: the \$800 tap fee or any other tap fee, \$150 in numerous disconnection fees or any new charges for disconnection fees; any new fees to restore service; or the disputed \$235 outstanding balance (reflected on Exhibit 1 to the Complaint).

III. ORDER

A. It Is Ordered That:

1. Consistent with the above discussion, Baxter Water Services, Mr. Jarden, also known as Mr. Jardens, O'Neal Water, and Mr. Scott Greenwell (Respondents) must continue to provide service to Complainant, Mr. Ivan Guillermo Valles while this Complaint is pending. Respondents are prohibited from discontinuing service while this matter is pending.

2. If service has already been discontinued, Respondents must restore service to Complainant Mr. Valles as soon as possible, but no later than three calendar days after this Decision's mail date.

3. On or by February 28, 2023, Complainant Mr. Valles must pay Respondents the undisputed amounts due for water service, that is \$132.50, and must stay current on his water bill

while this matter is pending, except that this does not require Mr. Valles to pay Respondents amounts that the Complaint disputes, including any new charges for service discontinuation or restoration.

4. This Order shall be effective immediately.

(S E A L)



ATTEST: A TRUE COPY

G. Harris Adams,
Interim Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge